

# MANUFACTURED HOME OWNERS AND COMMUNITY OWNERS ACT

## SUMMARY 2005

This is a summary of the Delaware *Manufactured Home Owners and Community Owners Act* that took effect on August 23, 2003. The purpose of this summary is to familiarize home owners and community owners with the provisions of the Act and with their rights and obligations under the law. This is only a general summary and does not cover all aspects of the *Manufactured Home Owners and Community Owners Act*. For specific legal questions, please refer to the statute itself (25 Del.C. §7001 to §7027) or consult an attorney. You can obtain a complete copy of the Act at the DE Attorney General's website at [www.state.de.us/attgen/](http://www.state.de.us/attgen/). General questions concerning the *Manufactured Home Owners and Community Owners Act* may be referred to:

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# MANUFACTURED HOME OWNERS AND COMMUNITY OWNERS ACT

## SUMMARY 2005

### GENERAL INFORMATION

- *The Manufactured Home Owners and Community Owners Act*, Title 25 of Chapter 70, is referred to as the “Law” in this summary. All sections (§) in this summary are to Title 25, unless otherwise indicated.
- *The Manufactured Home Owners and Community Owners Act* or Law governs manufactured home communities, the owners of the communities and the owners of the manufactured homes in the communities. (§7001)
- This Law applies to all rental agreements for home lots in manufactured home communities. (§7001)
- This Law regulates and determines the legal rights, remedies and obligations of all parties to a rental agreement for a lot for a manufactured home in a manufactured home community within the State of Delaware. (§7001(b))
- In the absence of a provision in this Law governing the relationship between a manufactured home owner (tenant) and a manufactured home community owner (landlord), the *Residential Landlord-Tenant Code* governs the relationship. The *Residential Landlord-Tenant Code*, Chapters 51 through 57 of Title 25, governs the rental of a manufactured home. (§7002)
- If there is a conflict between a provision of this Law and of the Residential Landlord-Tenant Code, this Law applies, not the Landlord-Tenant Code. (§7002)

### **Definition of a Manufactured Home (§7003)**

A manufactured home:

- is a factory-built, single-family dwelling, eight or more feet in width and forty feet or more in length, or more than four hundred square feet in living area;
- is moved in sections to a location with or without a permanent foundation that is designed to be used as a year-round dwelling when connected to the required utilities;
- is also known as a mobile home or trailer;
- **is not** a recreational vehicle such as a travel trailer, camping trailer, park trailer, camper, camper motor home, or similar vehicle designed primarily to be temporary living quarters for recreation camping or for seasonal or travel use which has its own motor power or is mounted on or drawn by another vehicle.
- All references to “homes” in this Summary are to manufactured homes.

### **Definition of a Manufactured Home Community (§7003)**

A manufactured home community:

- is a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes;
- means the same as mobile home park, trailer park, and trailer court.
- All references to “community” in this Summary are to manufactured home communities.

### **The Landlord is the Community Owner (§7003)**

The landlord, also called the community owner, is the owner of two or more home lots offered for rent who directly or indirectly receives rent for the lots and is not obligated to give the rent to any other person.

### **The Tenant is the Owner of the Manufactured Home (§7003)**

A tenant is the owner of a manufactured home who leases a lot in a manufactured home community where the home is placed.

## RENTAL AGREEMENTS - LEASES

### General Requirements

- All rental agreements, also called leases, must be in writing. Rental agreements are called leases in this summary. (§7003)
- The lease must be signed or executed before the tenant occupies a lot. (§7006(e))
- No lot can be offered for rent unless the lot conforms to the applicable state, county or municipal statutes, ordinances or regulations under which the manufactured home community was created, or under which the manufactured home community currently and lawfully exists.(§7006(f))
- A landlord may not rent a lot without first giving the tenant a copy of the lease, a copy of the rules, standards and fee schedule for the community and a copy of the *Manufactured Home Owners and Community Owners Act*, Chapter 70 of Title 25 of the Delaware Code. (§7005)
- Any lease provision that conflicts with this law is unenforceable. An unenforceable provision does not affect the enforceability of the other provisions in the lease which can be given effect without the unenforceable provision. (§7001)

### Length of the Lease Term (§7007)

- All leases must be for **one year** unless the parties agree to a shorter or longer term and their agreement is written in the lease.
- The landlord must **automatically renew** all leases for the same term and with the same provisions as the original agreement, with the exception that the landlord **may change the amount of and payment of rent**.
- Other changes to a lease are permitted only if the landlord and tenant agree and the changes are not prohibited by law.

### All Leases MUST CONTAIN: (§7006(a))

- Specific identification and location of the rented lot;
- The total annual rent for the lot;
- The amount of rent that is due monthly, quarterly, semiannually or annually;
- The time period after which the tenant must pay a late fee for rent and the amount of the late fee;
- A list of all fees that a tenant may be charged and the circumstances under which a fee can be charged;
- The name and address of the landlord or the person authorized by the landlord to receive notices and accept service on the landlord's behalf;
- The name and address of the federally insured financial institution where the landlord's security-deposits account is kept;
- A services rider containing a description of:
  - a. each utility, facility and service provided by the landlord
  - b. identification of the landlord or the tenant as the party is responsible for the cost of installation or maintenance, and
  - c. the fees or charges that must be paid by the tenant.
- A summary of the lease containing a brief description of the home, the rented lot, rental amount, term of the lease, landlord's mailing address, tenant's mailing address, fees, security deposit, information regarding rent adjustment, community status and method of notice;

- When, why and how the lease can be terminated under the law;
- A notice that the *Manufactured Home Owner and Community Owners Act* found at 25 Del.C. §7001 through 7027 governs the relationship between the landlord and the tenant regarding the lot rental;
- The obligations of the landlord (See page 8 for a list of the landlord's obligations)
- The obligations of the tenant (See page 9 for a list of the tenant's obligations)

**Leases may NEVER CONTAIN Provisions that:** (§7006(b))

- a person other than the tenant can confess judgment on a claim arising out of the rental agreement;
- the tenant gives up any right or remedy provided by law;
- the tenant gives up the right to a jury trial;
- the landlord can take possession of the rented lot or the tenant's personal property without having to go to through formal legal process;
- the landlord can collect a fee for late payment of rent without allowing the tenant to pay the rent in full a minimum of five days beyond the date the rent is due;
- the landlord can charge a fee for late payment of monthly rent that is more than \$25.00 or 5%, whichever is greater, that the amount of rent owed;
- the landlord can keep the security deposit at the end of the lease term even though the tenant has paid the rent and any fees or charges in full and has not damaged the landlord's property;
- the landlord can charge an amount more than one month's rent for a security deposit, unless the tenant agrees;
- the landlord can collect a deposit more than one normal billing period for any governmental mandated charge which is the responsibility of the tenant and would ultimately become the responsibility of the landlord if not paid by the tenant, or to retain the deposit upon termination of the lease if the tenant has paid the mandated charge;
- the tenant cannot terminate the lease upon a minimum of thirty (30) days notice when a change in the location of the tenant's current employment causes the tenant to commute thirty (30) miles farther than the tenant's current commuting distance from the community;
- a tenant who is a member of the armed forces of the United States cannot terminate the lease with less than thirty (30) days notice to the landlord if the tenant receives reassignment orders which do not allow at least thirty (30) days notice;
- the tenant waives any cause of action against, or indemnification for the benefit of, the landlord by the tenant for any injury or harm caused to the tenant or to residents, guests or visitors or to the property of the tenant, residents, guests or visitors resulting from any negligence of the landlord or of a person acting for the landlord in the performance of the landlord's obligations under the lease;
- the tenant gives up the right to treat a continuing, substantial violation by the landlord of any agreement or duty protecting the health, welfare or safety of the tenant or residents as a constructive or actual eviction which would otherwise permit the tenant to terminate the lease and to immediately cease payments thereunder; provided, that the landlord fails to correct the condition giving rise to the violation or fails to cease the violation within a reasonable time after

written notice is given to the landlord by the tenant;

- prohibits the tenant from displaying a for-sale sign that advertises the sale of a home in the community; however, the landlord may establish reasonable limitations as to the number of signs and the size and placement of signs;
- unreasonably limits the tenant's freedom of choice in the purchase of goods and services, provided however, that:
  - a. the landlord is not required to allow service vehicles to have access to the community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;
  - b. the landlord may restrict trash collection to a single provider; and
  - c. the landlord may select shared utilities.
- the tenant or the landlord can recover attorneys' fees in a suit, action or proceeding arising from the tenancy;
- violates any federal, state or local law;
- requires the tenant to:
  - a. sell or transfer the home to the landlord; or
  - b. buy a home from the landlord; or
  - c. sell a home through the services of the landlord.
- the tenant must give the landlord a key to the tenant's home, anything attached to the home or any other buildings on the rented lot;

- restricts the use of satellite dishes or television antennas in any way that conflicts with federal law or FCC regulations;
- the tenant must accept automatic deduction of rent payments from the tenant's checking or other account;
- the landlord has an option or right of first refusal to purchase the tenant's manufactured home;
- limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement;

**If a Lease contains an Illegal Provision: (§7006(c) and 7006(d))**

- A court can order the landlord to remove the provision and provide all affected tenants by regular mail with either an amended lease or corrective addendum to the lease within thirty (30) days of the exhaustion of all appeals, if any are taken; and
- In addition to removal and notification, a court can order the landlord to pay the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any;
- In addition to removal, notification and payment of damages, a court can order that the landlord pay the tenant three months' rent in addition to actual damages and court costs if the landlord **willfully** violated the law as to the lease provisions.

**If the Landlord does not sign the Lease (§7017)**

- If the tenant signs and gives the lease to the landlord and the landlord accepts the tenant's rent without reservation, the lease has the same effect as if the landlord had signed it.
- If the term shown on the lease is for longer than one year and the landlord does not sign the lease, the lease is only for one year.

**If the Tenant does not sign the Lease (§7017)**

- If the landlord signs and gives the lease to the tenant and the tenant accepts the rented lot and pays the rent without reservation, the lease has the same effect as if the tenant had signed it.
- If the term shown on the lease is for longer than one year, if the tenant does not sign the lease, the lease is only for one year.

**SECURITY DEPOSITS**

A landlord may charge a tenant a security deposit if provided for in the lease. (§7018(a))

**Amount of Deposit (§7018(a))**

The security deposit may not be more than one (1) month's rent unless the tenant agrees and the full amount is specified in the lease.

**Escrow Bank Account (§7018(b))**

- Every security deposit paid to a landlord must be placed by the landlord in an escrow bank account in a federally-insured financial institution with an office that accepts deposits within the State.
- The account must be designated as a security-deposits account and may not be used by the landlord for any purposes other than those described in the section below called "Purposes of Security Deposits."

- The landlord must disclose in the lease the location of the security deposit account. If the landlord changes the location of the security deposit account, the landlord must notify each tenant of the new location within thirty (30) days of the change.
- Security deposit principal must be held and administered for the benefit of the tenant, and the tenant's claim to such money has priority over that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.
- Security deposits paid under existing leases signed before August 25, 2003 must be escrowed on or before June 30, 2005.

**Purposes of Security Deposits: (§7018(c))**

- To reimburse a landlord for actual damages which exceed normal wear and tear to the landlord's property that were caused by the tenant;
- To pay a landlord for all rent, rent arrearage, fees, charges, Trust Fund assessments and other monies due and owed to the landlord by the tenant;
- To reimburse a landlord for all reasonable expenses incurred in renovating and re-renting the landlord's property caused by the premature termination of the rental agreement by the tenant, except for termination pursuant to §7009. (Please see page 16)

**Distribution of Security Deposit at the End of the Lease (§7018)**

If the tenant damaged the landlord's property then:

- within twenty (20) days after the expiration or termination of a lease, the landlord must give the tenant an itemized list of damages, if any, to the landlord's property and the estimated cost of repair for each item; (§7018(d))
- the landlord must pay the tenant the difference between the security deposit and the cost for repair of damage to the landlord's property. If the landlord does not follow this procedure, the landlord's failure constitutes an acknowledgment by the landlord that no payment for repair of damage is due. (§7018(d))
- the tenant's acceptance of a payment submitted by the landlord with an itemized list of damages constitutes agreement on the damages as specified by the landlord, unless the tenant objects in writing within ten (10) days of receiving the landlord's payment. (§7018(d))

If the tenant did not damage the landlord's property then:

- within twenty (20) days after the expiration or termination of the lease, the landlord must pay the tenant the portion of the security deposit the landlord is not entitled to keep. (§7018(e))

**If the Landlord Fails to Comply with the Security Deposit Requirements (§7018(f))**

- If the landlord fails to pay the tenant the security deposit or the difference between the security deposit and the cost for repair of damage within twenty (20) days from the expiration or termination of the lease, the tenant is entitled to double the amount wrongfully withheld.
- If the landlord fails to disclose the location of the security deposit account within twenty (20) days of a written request by a tenant or if the landlord fails to deposit a security deposit in a federally-insured financial institution with an office that accepts deposits within the State, the landlord must forfeit the security deposit and return it to the tenant.
- If the landlord fails to return the full security deposit to the tenant within twenty (20) days from



the effective date of forfeiture, the tenant is entitled to double the amount of the security deposit.

#### **Communications and Notices about Security Deposits (§7018(g))**

- All communications and notices concerning security deposits from a tenant must be sent to a landlord at the address specified in the lease;
- All communications and notices concerning security deposits from the landlord must be sent to the tenant at an address specified in the lease or at a forwarding address, if a forwarding address was provided to the landlord in writing by the tenant;
- Failure by a tenant to provide a forwarding address relieves the landlord of the responsibility to give notice about the security deposit and removes the landlord's liability for double the amount of the security deposit.
- If the tenant fails to provide a forwarding address, the landlord continues to be liable to the tenant for any unused portion of the security deposit if, within one (1) year from the expiration or termination of the rental agreement, the tenant makes a claim in writing to the landlord.

#### **Increase in the Amount of the Security Deposit (§7018(i))**

- If the lease so specifies, a landlord may increase a security deposit commensurate with an increase in rent.
- If an increase of the security deposit exceeds ten (10) percent of the monthly rent, the tenant may choose to pay the increase in the security deposit prorated over the term of the lease but not to exceed twelve (12) months, except for a month-to-month tenancy, in which case payment of the increase may not be prorated over a period more than four (4) months unless both the landlord and tenant agree.

#### **Additional Security Deposits for Pets (§7018(h))**

- A landlord may require a tenant to pay a pet security deposit for each pet if provided for in the lease;
- Damage to a landlord's property caused by a tenant's pet must first be deducted from the pet security deposit;
- If the pet deposit is insufficient, pet damages may be deducted from the tenant's nonpet security deposit;
- If a nonpet security deposit is insufficient to cover nonpet damages, damages may be deducted from the pet security deposit even if a pet did not cause such damages;
- A pet security deposit is subject to the same requirements as nonpet security deposits;
- A landlord may not require a tenant to pay a pet security deposit in an amount more than one month's rent, unless the tenant agrees to do so and the full amount is specified in the rental agreement;
- A landlord may not require a pet security deposit from a tenant if the pet is a certified and trained support animal for a person with a disability who is a resident of a manufactured home on a rented lot;
- Regardless of legal ownership of a pet, a pet that resides in a home, and/or on the lot where the home is located in a community, is deemed owned and controlled by the tenant who resides in the home.

## **OBLIGATIONS OF THE LANDLORD (§7006(a)(13))**

The landlord must:

- Maintain and re-grade the lot where necessary and in good faith to prevent the accumulation of stagnant water on the lot and to prevent the detrimental effects of moving water;
- Maintain the community in such a manner as will protect the health and safety of residents, visitors and guests;
- Identify each lot area in the community so each tenant can readily identify that tenant's own area of responsibility and specify the duties of the tenant in maintaining the tenant's own area of responsibility;
- Maintain the community, including common areas and rental lots not under rent, keeping it free of species of weeds or plant growth which are noxious or detrimental to the health of the residents;
- Make a good faith effort to exterminate insects, rodents, vermin or other pests which are dangerous to the health of the residents when an infestation exists in the common areas of the community;
- Maintain all water, electrical, plumbing, gas, sewer, septic and other utilities and services provided by the landlord in good working order, repairing these utilities and services within the earlier of forty-eight (48) hours after written notification of a utility or service problem, or as soon after that as is practicable if a repair within forty-eight (48) hours is not practicable;
- When applicable, specify whether septic systems are to be maintained by the landlord or by the tenant;
- Respect the privacy of residents and agree not to enter into, under or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with seventy-two (72) hours' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible;
- Maintain all roads within the community in good condition;
- Comply with all federal, State and local building codes;
- Allow the tenant freedom of choice in the purchase of goods and services other than utilities and related services except that:
  - a. The landlord is not required to allow service vehicles to have access to the community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;
  - b. The landlord may restrict trash collection to a single provider;
  - c. The landlord may select shared utilities.

## **OBLIGATIONS OF THE TENANT (§7006(a)(14))**

The tenant must:

- Keep the exterior of the home and the lot in a clean and sanitary condition;
- Refrain from storing outside on the lot building materials, furniture or similar items usually not

stored outside a home by a property owner in a residential area;

- Dispose of all rubbish, garbage and other waste materials in a clean and sanitary manner;
- Abide by all reasonable written rules concerning use, occupation and maintenance of the premises;
- Abide by all reasonable written home standards.

#### **RENT INCREASES (§7021)**

- A landlord may not increase a tenant's lot rent more than once during any 12-month period, regardless of the term of the tenancy or the term of the lease.
- A landlord must give written notice of a lot rent increase to a tenant a minimum of sixty (60) days before the effective date of the rent increase.

### **FEEES**

#### **Fees and Charges in addition to Rent (§7008)**

- A landlord may charge a tenant a fee for a service furnished to the tenant, or for an expense the landlord incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions. (§7008(a))
- The landlord must clearly disclose all fees in a fee schedule which must be attached to the lease. (§7008(b))
- A fee may be considered as rent for purposes of termination of a lease, summary possession proceedings or for other purposes specified in this Law. (§7008(b))

#### **If the Tenant fails to pay a Fee (§7008(c))**

- If the tenant fails to perform an obligation arising under the lease, a fee cannot be charged by the landlord unless the landlord first notifies the tenant of the failure and allows the tenant five (5) days after notification to perform the obligation.
- If the tenant does not perform the obligation and does not pay the fee within five (5) days of notification, the landlord may use the nonperformance as a basis to terminate the lease.

#### **Application Fees (§7008(d))**

- A prospective tenant may be required to pay an application fee to be used by the landlord to determine the prospective tenant's credit worthiness.
- An application fee cannot exceed the greater of 10% of the monthly lot rent or \$50.
- A landlord who receives an application fee, must give a receipt to the prospective tenant for the full amount paid and must keep for at least two (2) years complete records of all application fees charged and the amount received for each fee.
- If a landlord demands or charges more than the allowable application fee, the prospective tenant is entitled to damages equal to double the amount demanded or charged as an application fee by the landlord.

#### **Utility Fees (§7008(j))**

- A landlord may charge a tenant for utilities provided by the landlord to the tenant if specified in the lease.
- The fee charged by a landlord for a utility may not exceed the utility's retail consumer rate.

- The fee charged by the landlord may be adjusted without notice on a monthly basis.

**Pass-Through Utility Fees (§7008(e))**

- If the landlord pays the tenant's utility charge to a third party, such as an electric or water company, because the tenant failed to make the payment, the charge is called a pass-through utility fee.
- The landlord may collect any late charge paid by the landlord to the third party, and the landlord may charge the tenant a fee not to exceed the greater of 5% of the total amount paid by the landlord to the third party or \$25.

**Late Fees for Late Payment of Rent (§7008(f))**

A landlord may charge a fee for the late payment of rent if:

- the rent is not paid within five (5) days after the due date specified in the lease; and
- the lease allows the landlord to charge a late-payment fee for rent.

**Use Fees for Facilities or Services (§7008(g))**

- A landlord can charge an optional-user fee for the use of designated facilities or services such as swimming pools, marine facilities and tennis courts.

- If the tenant fails to pay an optional-user fee, the failure may not be used as the basis for termination of the lease.
- However, continued use of the facility or service without paying the optional-user fee, can be used by the landlord as a basis to terminate the lease.
- The amount of an optional-user fee must be reasonably related to the cost of providing the facility or service. (§7008(h))

#### **Increase in Fees (§7008(i))**

- A fee may not be increased more than once during any 12-month period with the exception of a utility fee.
- A landlord must notify the tenant in writing of any fee increase or additional fee at least sixty (60) days before the effective date of the increase or addition.
- A fee increase or an additional fee is unenforceable unless proper written notice has been given to the tenant.

#### **Entrance and Exit Fees (§7008(k))**

- A landlord cannot charge an entrance or exit fee.
- An entrance fee is any fee charged by a landlord to a tenant before the tenant's occupancy of a rented lot, except for an application fee or a security deposit, or for those fees or charges for utilities, for direct services actually rendered, or for the use of facilities, all of which must be identified and described in the lease or in a separate notice.
- An exit fee is a fee charged by a landlord to a tenant immediately before or after the tenant's final departure from the rented lot, except for those fees or charges for direct services actually rendered by the landlord which would not otherwise be provided without charge in the normal course of business.

#### **Fees for Discontinued Utility, Facility or Service (§7008(l))**

If a utility, facility or service provided pursuant to the lease is discontinued:

- the landlord must reduce the tenant's rent or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility or service;
- The reduction in rent or fees must be determined as follows:
  - a. No less than sixty (60) days before the discontinuance of the utility, facility or service, the landlord must notify all affected tenants of the discontinuance, and include in the notification an explanation of the discontinuance and the reduction in the direct operating cost, if any, associated with the discontinuance;
  - b. Within ten (10) days after the landlord's notice of the discontinuance of the utility, facility or service, the tenants may form a committee not to exceed five (5) members. The committee and the landlord shall meet together at a mutually convenient time and place to discuss the discontinuance of the utility, facility or service;

- c. At the meeting, the landlord must disclose and explain all material factors for the proposed discontinuation of the utility, facility or service, with supporting documentation;
- d. The determination of the reduction in the direct operating cost of the utility, facility or service must be made by an independent public accountant or certified public accountant paid for by the landlord. The determination is binding upon both the landlord and the tenants.

#### **RULES (§7019)**

##### **All Rules must be Reasonable and Written (§7019(a))**

A landlord may have and enforce reasonable written rules concerning:

- the occupancy and use of the premises and the use of the landlord's property;
- the behavior of tenants, residents, guests and visitors;
- All rules must further one or more of the following purposes:
  - a. Promoting the health, safety, or welfare of tenants, residents, guests or visitors;
  - b. Promoting the tenants' and residents' quiet enjoyment;
  - c. Preserving the property values of tenants or landlords;
  - d. Promoting the orderly and efficient operation of the community;
  - e. Preserving the tenants' or landlords' property from abuse.

##### **Enforcement of Rules (§7019(b))**

- A landlord may not arbitrarily or capriciously enforce a rule.
- A landlord may choose not to enforce a rule based upon the documented special needs or hardship of a tenant or resident without waiving the right to the later enforcement of the rule as to that tenant or resident or any other tenant or resident.

##### **Change or Amendment to Rules (§7019(c))**

- A landlord may amend or change an existing rule at any time.
- The amended rule is not effective until the date specified in the amended rule or sixty (60) days after the landlord delivers to the tenant written notice of the amended rule, whichever is later.
- Within ten (10) days of the landlord's notice of an amended rule, a committee, not to exceed five (5) members, may be chosen by any method agreed to by the tenants of the community.
- The committee shall meet with the landlord at a mutually convenient time and place to discuss the amended rule.
- At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the amended rule.

#### **HOME STANDARDS (§7020)**

##### **Standards for Homes Entering the Community (§7020(a))**

- A landlord must adopt reasonable written standards regarding the size, age, quality, appearance, construction, materials and safety features for homes entering the community.
- A landlord may refuse to allow the placement of a home on a lot in the community if the home

does not comply with the reasonable written standards.

### **Standards for Existing Homes in the Community**

#### **Homes that are Not For Sale (§7020(b))**

- Tenants already living in the community at the time a standard is promulgated must bring their homes into compliance with the standard within nine (9) years of the promulgation of the standard. If they fail to bring their home into compliance within nine (9) years, they may be subject to a summary possession proceeding pursuant to Chapter 57 of Title 25.
- If the change in a home is necessary to protect life or for other safety reason, the landlord may require that the change be made in less than nine (9) years.
- Once work begins on the home, the necessary change must be completed within a reasonable time.

#### **Homes For Sale or Transfer of Title (§7020(c))**

- A landlord must adopt reasonable written standards regarding the resale or transfer of title of a home that is intended to stay in the community.
- The standards must relate only to appearance, maintenance, safety and compliance with state and local housing, building or health codes, and the 1976 HUD Code.
- A landlord may not issue standards in which the age of a home is the exclusive or dominant criterion prohibiting the home from being sold and retained in the community after the sale is consummated.
- If a home does not meet a landlord's written standards for resale or transfer of title and retention in the community, a tenant may attempt to bring the home into compliance with the standards.
- The landlord shall, within ten (10) days of a written request from the tenant, re-evaluate the home in a reasonable and fair manner.

#### **Enforcing Standards (§7020(d))**

- No standard may be arbitrarily or capriciously enforced.
- A landlord may choose not to enforce a standard based upon the documented special needs or hardship of a tenant without waiving the right to the later enforcement of the standard as to that tenant or any other tenant.

#### **Change or Amendment to the Standards (§7020(e))**

- A landlord may at any time establish or amend a standard.

- The newly established or amended standard is not effective until the date specified in the established or amended standard or sixty (60) days after the landlord delivers to the tenant written notice of the established or amended standard, whichever is later.
- Within ten (10) days of the landlord's notice of the established or amended standard, a committee, not to exceed five (5) members, may be chosen by any method agreed to by the tenants of the community.
- The committee shall meet with the landlord at a mutually convenient time and place to discuss the established or amended standard.
- At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the established or amended standard.

#### **SALE OF HOME AND TRANSFER OF RENTED LOT (§7022)**

A lease for a rented lot in a community is transferable to the buyer of the home on the lot if:

- the home qualifies for retention in the community according to the community's written standards;
- the landlord accepts the buyer or transferee as a tenant. Acceptance or rejection of a buyer or transferee under this subsection must be on the same basis by which the landlord accepts or rejects any prospective tenant. A landlord who rejects a prospective tenant must give the rejected prospective tenant a written statement that explains the cause for the rejection;
- the tenant must notify the landlord in writing three (3) weeks before the scheduled sale or transfer of title of the home and the transfer of the lot lease, giving the name and address of the prospective buyer or transferee. Failure by a tenant to so notify the landlord is grounds for termination of the lease by the landlord.
- If the landlord accepts the prospective tenant, the transfer of an existing lease must be completed using one of two methods decided by the exclusive discretion of the tenant/seller of the home and binding upon the buyer. The two methods are:
  - a. The **tenant/seller agrees to an assignment of the lease** to the buyer, with all of the existing obligations and benefits, including but not limited to the rental amount under the existing lease, for the remaining term of the agreement. If this option is elected, the existing lease between the tenant/seller and the landlord is simultaneously assigned by the tenant/seller and assumed by the buyer and the buyer becomes the new tenant. Upon the sale, assignment, and assumption, the landlord will amend the existing lease and list the buyer as the new tenant. (§7022(d)(1))
  - b. The **tenant/seller chooses to terminate the existing lease**. The buyer may then negotiate the terms of and enter into a new lease for a full term at a rental amount set by the landlord. If this option is elected, the existing lease is terminated upon the execution of the new lease. (§7022(d)(2))



- A buyer or transferee who becomes a tenant in a community has three (3) years from the date of the resale or transfer to complete changes to the buyer or transferee's home required under the written standards of the community. However, if the changes are necessary to protect life or for other safety reasons, the landlord may require that changes be made in less than three (3) years. Further, if a seller/tenant does not make necessary changes to meet the standards before sale, the buyer or transferee shall deposit 120% of the estimated cost of the changes necessary to meet the standards into an account jointly controlled by the landlord and the buyer or transferee. Once work begins on the home, the necessary changes must be completed within a reasonable time. A buyer or transferee who does not complete required changes is subject to a summary possession proceeding pursuant to Chapter 57 of Title 25. (§7022(e))

#### **A LANDLORD MAY NOT RETALIATE AGAINST A TENANT (§7023)**

- Retaliatory acts by a landlord are prohibited.
- A retaliatory act is an attempted or completed act by a landlord to pursue an action against a tenant for summary possession, to terminate a tenant's lease, to cause a tenant to move involuntarily from a rented lot in the community, or to decrease services to which a tenant is entitled under a rental agreement, after:
  - a. the tenant complained in good faith to either the landlord or to an enforcement authority about a condition affecting the premises of the community which constitutes a violation of this Law or a violation of a housing, health, building, sanitation or other applicable statute or regulation;
  - b. an enforcement authority has instituted an enforcement action based on a complaint by the tenant for a violation of this Law or a violation of a housing, health, building, sanitation or other applicable statute or regulation with respect to the premises;
  - c. the tenant has formed or participated in a tenants' organization or association; or
  - d. the tenant has filed a legal action against the landlord or the landlord's agent for any reason.
- If a tenant proves that a landlord attempted to commit or committed a retaliatory act within ninety (90) days of a tenant taking one of the four actions described above, the landlord's act is presumed to be a retaliatory act.
- The landlord may raise the following affirmative defenses to a claim that the landlord attempted to commit or committed a retaliatory act include proof by a preponderance of the evidence that:
  - a. the landlord had due cause for termination of the lease pursuant to this law and gave the required notice to the tenant;
  - b. the tenant's legal action against the landlord relates to a condition caused by the lack of ordinary care by the tenant or by a resident of the tenant's home or by a guest or visitor on the premises with the tenant's or resident's consent;
  - c. the rented lot was in substantial compliance with all applicable statutes and regulations on the date of the filing of the tenant's legal action against the landlord; or
  - d. the landlord could not have reasonably remedied the condition complained of by the tenant by the date of the filing of the tenant's legal action against the landlord.
- If a tenant has been subjected to a retaliatory act, the tenant is entitled to recover the greater of

three (3) months' rent, or three (3) times the damages sustained by the tenant, in addition to the court costs of the legal action.

## **TERMINATION OF A LEASE**

### **TERMINATION BY THE TENANT (§7009)**

#### **During the First Month of Occupancy, the Tenant Can Terminate the Lease:**

- If the landlord fails to substantially comply with the provisions of the lease, or there is a material noncompliance with this law or any statute, ordinance or regulation governing the landlord's maintenance or operation of the community, the tenant may give written notice to the landlord, terminate the lease and vacate the rented lot by removing his or her home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot.
- The tenant retains the right to terminate a rental agreement **beyond the first month of occupancy** if the tenant remains in possession of the lot in reliance on the written promise by the landlord to correct the condition or conditions which would justify termination of the agreement by the tenant during the first month of occupancy. (§7009(a))
- If a condition exists, not caused by lack of due care by the tenant, a resident of the tenant's home, or any other person on the premises with the tenant's or resident's consent, which deprives a tenant of a substantial part of the benefit and enjoyment of the bargain pursuant to the lease, the tenant may notify the landlord in writing of the condition, and, if the landlord does not remedy the condition within fifteen (15) days from the date the notice was mailed to the landlord, the tenant may terminate the lease and vacate the rented lot by removing the tenant's home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot. Notice pursuant to this subsection need not be given if the condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or a resident of the tenant's home. (§7009(b))
- If the condition was caused by the landlord, the tenant may recover any damages sustained as a result of the condition, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing while the home is uninhabitable or while an imminent threat to health, safety or welfare exists, or while the tenant is deprived of a substantial part of the benefit and enjoyment of the bargain pursuant to the lease before the termination of the lease by the tenant, and for a reasonable length of time following the termination of the lease. (§7009(d))

#### **During the First Eighteen Months of Occupancy, the Tenant Can Terminate the Lease:**

- If the landlord or the landlord's authorized representative intentionally misrepresents a material fact regarding the community, the scope or extent of services provided by the landlord, or a provision of the lease in a brochure, newspaper, radio or television advertisement, or other document or advertisement, for the purpose of inducing a tenant to enter into a lease, and the tenant reasonably relies upon the misrepresentation to the tenant's detriment when entering into the lease. (§7009(e))

#### **At the End of the Term of the Lease: (§7007(b)(1))**

- The tenant can terminate the lease by giving written notice to the landlord in writing at least sixty (60) days before the expiration of the lease.
- If the tenant and landlord agree to a period shorter or longer than sixty (60) days notice, the tenant can terminate by giving written notice during that period. (§7007(b)(1))

#### **TERMINATION BY THE LANDLORD (§7010(a))**

- The landlord can terminate the lease or refuse to renew the lease for due cause only.
- Due cause means:
  - a. an intended change in the use of the land; or
  - b. failure by the tenant to comply with the lease or the rules, also called noncompliance.

#### **Intended Change in the Use of the Land (§7010(b))**

- Intended change occurs when the landlord decides that the land will no longer be used as a manufactured home community.
- If the use of the community changes:
  - a. The landlord must give all the tenants at least one (1) year notice of the change and that their leases will not be renewed and that they need to find a new location for their homes.
  - b. The rent may not be increased after the landlord gives notice of the change of use.
  - c. Notice to the tenants must be in writing and must be posted on each tenant's home and sent to each tenant by certified mail, return receipt requested.
  - d. The landlord must give a "Relocation Plan" to each tenant and the Delaware Manufactured Home Relocation Authority
  - e. Comply with all federal, State and local laws relating to older tenants and tenants with disabilities.

PLEASE NOTE: Detailed information about the Delaware Manufactured Home Relocation Authority and Relocation procedures are found in the *Manufactured Home Owners and Community Owners Act* at 25 Del.C. §§7011, 7012, 7013, 7014 and 7015.

PLEASE NOTE: This law does not apply if the change of use is for conversion of the community to a manufactured home cooperative or condominium community. Changes to a home cooperative or condominium community are governed by Chapter 71 of Title 25. (§7027)

#### **The Tenant's Noncompliance with a Lease, Rule, Standard or Fee (§7010A)**

- If the tenant does not comply with the lease or rules the landlord can **immediately terminate the lease** and **bring an action for summary possession** by **giving proper written notice** to the tenant containing the specific reasons and details as to dates, places and circumstances under the following conditions:
  - a. there is clear and convincing evidence that the tenant or a resident of the tenant's home caused, is causing, or threatens to cause, immediate and irreparable harm to any person or property in the manufactured home community;

- b. the tenant or a resident of the tenant's home has been convicted of a crime or adjudicated delinquent of an act which caused immediate and irreparable harm to any person or property in the manufactured home community;
  - c. there is clear and convincing evidence that the tenant made a material misrepresentation on the application to rent a lot which, if the truth were known, would have resulted in the denial of the application;
  - d. the tenant failed to properly notify the landlord before selling the home or transferring the title to the home when the home is to remain in the community;
  - e. the tenant failed to bring the home into compliance with written standards within the time permitted under this law. (See page 12 for more information as to standards) (§7010A(a))
- If the tenant does not comply with the lease or rules the landlord can **immediately terminate the lease and bring an action for summary possession** if **prior, proper written notice** containing the specific reasons and detail as to dates, places and circumstances was given to the tenant under the following conditions:
  - a. If the tenant's conduct or a resident of the tenant's home, or tenant's guest or visitor results in the disruption of the rights of others entitled to the quiet enjoyment of the premises, the landlord must notify the tenant in writing to immediately cease the conduct and not repeat it. The notice must specify the conduct and notify the tenant that if the same conduct recurs within six (6) months, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or
  - b. If the tenant's noncompliance is based on a condition present on the rented lot, the landlord must notify the tenant in writing, specifying the condition and giving the tenant twelve (12) days from the date of mailing or personal service to remedy the problem. If the tenant does not correct the problem within the 12-day period, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or
  - c. If the rent, including late fees for rent, other fees and charges, including utility charges, and the Trust Funds assessment, is not received by the landlord by the 5th day after the due date or during the grace period stated in the rental agreement, whichever is longer, the landlord must notify the tenant in writing, demanding payment and stating that unless the required payment is made within seven (7) days from the date of mailing or personal service, the rental agreement will be terminated. If the tenant does not pay within the 7-day period, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession. (§7010A(b))
- If there are repeated acts of noncompliance, even if corrected by the tenant, the landlord may **immediately terminate** the rental agreement and bring an action for summary possession or **refuse to renew the lease**:

- a. If on four (4) separate occasions within twelve (12) consecutive payment periods, the tenant fails to make a rent payment by the 5th day after the due date or during the grace period stated in the rental agreement, whichever is longer (the landlord must notify the tenant after the 3<sup>rd</sup> separate occasion that one more occasion may result in either the immediate termination of the rental agreement or the nonrenewal of the rental agreement at its expiration);
- b. If on two (2) separate occasions within twelve (12) consecutive payment periods, the tenant fails to reimburse the landlord within seven (7) days of notice that the landlord paid the tenant's utility charge;
- c. If on two (2) separate occasions within twelve (12) consecutive payment periods, the tenant's bank draft or check is dishonored by a financial institution for any reason, except for a mistake by the financial institution;
- d. If on four (4) separate occasions within twelve (12) consecutive payment periods, the tenant's conduct or a resident of the tenant's home, or tenant's guest or visitor results in the disruption of the rights of others entitled to the quiet enjoyment of the premises; or if the tenant permits a condition to occur on the rented lot which violates the law, the lease or the rules;
- e. If on four (4) separate occasions within twelve (12) consecutive payment periods, any combination of noncompliance occurs. (§7010A(c))

#### **ACTIONS FOR SUMMARY POSSESSION THE RENTED LOT**

- A summary proceeding to recover the possession of a rented lot, may be maintained in the Justice of the Peace Court in the county where the property is located. (§7002)
- The provisions contained in Chapter 57 of Title 25 of *The Landlord Tenant Code* govern the proceedings for summary possession of a manufactured home lot.
- This summary does not address all of the information that a tenant or landlord must know and consider if involved in a summary possession proceeding. Tenants and landlords should review Chapter 57 of Title 25 of *The Landlord Tenant Code* and Chapter 70 of Title 25, *The Manufactured Home Owners and Community Owners Act*.
- Information on summary possession proceedings and the forms necessary to bring or defend an action is available from Justice of the Peace Courts and the Court's website.

#### **TENANT'S PROPERTY LEFT BEHIND ON THE LOT**

- If at the time of the enforcement of the writ of possession, the tenant has left property behind on the rental lot, the landlord may remove and store all such property.
- If the tenant does not pay for the removal and storage of the property within seven (7) days, the landlord may dispose of the property without further notice or obligation to the tenant.

#### **DELIVERY OF WRITTEN NOTICE (§7024)**

##### **Personal Service on a Tenant**

- Unless otherwise specified, notice required by this law may be served personally upon a tenant by leaving a copy of the notice at the tenant's home with an adult person who resides therein.
- Service of notice or process may be obtained through personal service by a special process-server appointed by the court.

**Personal Service on a Landlord**

- Notice required by this subchapter may be served personally upon a landlord or upon any other person in the employ of the landlord whose responsibility is to accept such service.
- If a landlord is a corporation, firm, unincorporated association or other artificial entity, service of the notice may be made by leaving a copy of the notice at its office or place of business with an agent authorized to accept such notice or authorized by law to receive service of process.
- Service of notice or process may be obtained through personal service by a special process-server appointed by the court.

**Service by Mail on a Tenant**

- In lieu of personal service, notice required by this Law may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the tenant at the address of the tenant's rented lot, or at an alternative address which the tenant provided in writing to the landlord.
- Proof of mailing regular first class mail on U.S. Postal Service Form 3817 or its successor, or a return receipt, signed or unsigned, for certified mail constitutes valid service of any notice required under this law.

**Service by Mail on a Landlord**

- Notice required by this law may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the landlord at the landlord's last known dwelling place or at the landlord's last known office or place of business.
- Proof of mailing regular first class mail on U.S. Postal Service Form 3817 or its successor, or a return receipt, signed or unsigned, for certified mail constitutes valid service of any notice required under this law.

**OFFERS TO BUY OR RENT THE COMMUNITY (§7026)**

A manufactured home community owner shall notify the tenants of the community within twenty (20) days of the owner's acceptance of any bona fide offer to buy or rent the community.

**ENFORCEMENT BY THE CONSUMER PROTECTION UNIT****OF THE ATTORNEY GENERAL'S OFFICE (§7025)**

A violation of a provision of this Law by a landlord is within the scope of the enforcement duties and powers of the Consumer Protection Unit, or its successor, of the Attorney General's Office.